IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3191 OF 2004

IN

SUIT NO.3123 OF 2004

Ajit Prabhakar Nerurkar & Another. ... Plaintiffs.

vs.

Nivedita Kasargod. ... Defendant.

Mr.S.C.Gupte with V.V.Warerkar, for Plaintiffs

Mr.D.D.Madan with Pritish Jaiswal i/b. Kanga & Co. for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd September,2005

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. The plaintiffs have filed the suit for decree of specific performance. Perusal of the record shows that agreement for sale of a flat was entered into between the plaintiffs and defendant. The total amount of consideration is Rs.23,25,000/-. Admittedly, out of that amount Rs.3

lakhs have been paid to the defendant by plaintiffs. The balance amount of consideration is Rs.20 lakh 25 thousand. According to the plaintiffs, he could not complete the transaction because of the provisions of Section 195 of the Income Tax Act and also because of No objection certificate that society was not given by the Society. This position was refuted by the defendant. According to the defendant, the plaintiffs did not have necessary funds to pay balance amount of Rs.20 lakhs 25 thousand because the plaintiffs could not secure the amount of loan from his employer viz. Larsen and Toubro before getting the Nil Tax certificate. The learned Counsel for the plaintiffs states that in order to establish readiness and willingness of the plaintiffs, the plaintiffs are willing to deposit balance amount of consideration in this Court.

2. In my opinion, considering that admittedly there is an agreement entered into between the parties, Rs.3 lakhs have admittedly been received by the defendant and considering the willingness of the plaintiffs to deposit the balance amount of consideration in the Court, an order of temporary injunction for securing interest of the plaintiffs is necessary. If the defendant is permitted to transfer the property during the pendency of the suit, the suit will become infructuous. Considering that the suit is for specific performance of the agreement for sale, in my opinion, therefore, the

following order would meet the ends of justice:-

(i) The notice of motion is granted in terms of prayer clause (b) excluding bracketed portion.

(ii) According to the defendant one of his relative by name Ajay Kumar Sharma is presently occupying the flat. Mr.Ajay Kumar Sharma has filed affidavit stating therein that he will not claim any interest in the flat and he is occupying the flat as a relative of the defendant. It is directed that in case the defendant permits some other relative than Ajay Kumar Sharma to occupy the flat during the pendency of the suit, the defendant shall place that fact on record of the suit by filing affidavit to that effect and the defendant shall also produce affidavit of a person to whom he would be permitting to occupy the flat stating therein that he does not claim any interest in the flat and he is occupying the flat merely as a relative of the defendant.

(iii) The plaintiffs are directed, as per his statement, to deposit amount of Rs.20 lakh 25 thousand in the Court within a period of six weeks from today. The amount be deposited with due intimation to the defendant and the amount so deposited shall be invested in Fixed deposit in a nationalised bank during the pendency of the suit.

(iv) If the plaintiffs fail to deposit the amount within the aforesaid period, then the notice of motion shall be treated as dismissed without any further reference to the Court.